



Amendment No. 1
of
Contract No. NA190000110
for
Consulting for Water Rights & Water Supply
between
Hoffpaur Consulting PLLC
and the
City of Austin

1.0 The City hereby exercises the extension option for the above-mentioned contract. Effective July 28, 2020 to July 27, 2021. Three options remain.

2.0 The total contract amount is increased by \$146,800.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 07/28/2019 – 07/27/2020	\$146,800.00	\$146,800.00
Amendment No. 1: Option 1 07/28/2020 – 07/27/2021	\$146,800.00	\$293,600.00

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature and Date: Richard Hoffpaur July 8, 2020

Printed Name: RICHARD HOFFPAUR
Authorized Representative

Hoffpaur Consulting PLLC
300 Borderbrook Drive
Bryan, TX 77801

Signature and Date: Cyrenthia Ellis

Cyrenthia Ellis, Procurement Manager
City of Austin
Purchasing Office

Digitally signed by Cyrenthia Ellis
DN: cn=Cyrenthia Ellis, o=City of Austin,
ou=Purchasing Office,
email=Cyrenthia.Ellis@austintexas.gov, c=US
Date: 2020.07.16 09:42:40 -0500

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Hoffpauir Consulting PLLC
For
Consulting For Water Rights & Water Supply
MA 2200 NA190000110**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Hoffpauir Consulting PLLC ("Contractor"), having offices at 300 Borderbrook Drive, Bryan Texas

77801.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 Engagement of the Contractor. Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 Responsibilities of the Contractor. The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 Responsibilities of the City. The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 Designation of Key Personnel. The Contractor's Contract Manager for this engagement shall be Richard Hoffpauir, Ph.D., P.E., Phone: (979) 575-0804, Email Address: richard@rjhoffpauir.com. The City's Contract Manager for the engagement shall be Virginia Soto-Reynolds, Phone: (512) 972-0337, Email Address: Virginia.Soto-Reynolds@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 Contractor's Obligations. The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2.2 Tasks. In order to accomplish the work described herein, the Contractor shall perform each of the following tasks:

Task 1: Assist City staff with matters related to water rights (25%)

2.2.1 The Contractor shall assist with Joint Application for Reuse (JAR) support in all aspects of the application. Among other things, this support shall include development of responsive materials during TCEQ technical review, participation in negotiations, development of settlement terms with possible protesting parties, and development of additional related technical information on an as needed basis, including modeling and development of an accounting plan.

2.2.2 The Contractor shall assist with the Grey Rock water right application, Stoneledge water right application, planned steam-electric water right amendments, and lake storage amendments. Among other things, this support shall include development of responsive materials during TCEQ technical review, participation in negotiations, development of settlement terms with possible protesting parties, and development of additional related technical information on an as needed basis, including modeling and development of an accounting plan.

2.2.3 The Contractor shall assist with amendments, permits, or applications necessary for Austin's Integrated Water Resources Plan ("IWRP") implementation.

2.2.4 The Contractor shall assist with other matters related to water rights applications or amendments. Among other things, this shall include assisting City staff with any matters that arise related to water rights, including but not limited to, monitoring other entities' water rights applications, new applications, new amendments, or water rights hearings.

Task 2: Water Supply/Drought (20%)

2.2.5 The Contractor shall assist with water supply analyses. This support shall include, among other things, monitoring and reporting inflow, combined storage, and drought conditions.

2.2.6 The Contractor shall assist City staff with drought-related matters as needed, including, among other things, drought-related water supply analyses.

2.2.7 The Contractor shall assist with other water supply matters that may develop.

Task 3: Integrated Water Resources Plan Implementation and Update (19%)

2.2.8 The Contractor shall assist City staff with modeling and hydrologic analysis related to Water Forward, Austin's Integrated Water Resources Plan ("IWRP"), implementation. Support shall include, among other things, aquifer storage and recovery modeling, new off-channel reservoir modeling, and indirect potable reuse modeling.

2.2.9 The Contractor shall assist City staff with periodic updates of the IWRP. Among other things, this support shall include hydrologic and climate change modeling, water supply modeling, and evaluation of plan metrics.

2.2.10 The Contractor shall assist with other IWRP analyses as needed.

Task 4: LCRA-Related Support (25%)

2.2.11 The Contractor shall assist with Lower Colorado River Authority ("LCRA") Water Management Plan ("WMP") revision and all other WMP matters. This support shall include, among other things, attendance of WMP participant meeting, assistance with drafting WMP comments, modeling to review WMP modeling results, additional modeling to look at alternatives related to the WMP, and support with potential hearings related to the WMP.

2.2.12 The Contractor shall assist in other LCRA-related activities, including, among other things, Water Partnership meetings and related activities, Lady Bird Lake operational protocols, analysis of new LCRA water supply development projects, and water contracting as necessary.

2.2.13 The Contractor shall assist with other LCRA-related items as needed.

Task List and Scope for Hydrologist Contract Attachment 3

November 14, 2018

Task 5: Regional Planning (6%)

2.2.14 The Contractor shall provide support for Region K Lower Colorado Regional Water Planning Group ("LCRWPG") matters. Among other things, this support shall include support at Water Modeling Committee meetings as needed, possible hydrologic and climate change modeling, modeling to review Region K water supply modeling results, and assistance with characterizing and modeling water supply strategies for the Austin Water User Group.

2.2.15 The Contractor shall assist with other regional water planning matters as needed.

Task 6: Other Items (5%)

2.2.16 The Contractor shall assist City staff with matters related to state environmental flow standards as needed.

2.2.17 The Contractor shall assist with other water analyses as needed

2.2.18 Supporting documentation required by the City will vary depending on the specific task, but may include written narratives, spreadsheets, graphs, model outputs and other analytical evaluation methods. The Contractor shall also take part in negotiations, workshops, conference calls and public meetings as required by the City.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein at a billable rate of \$175/hour and based upon the successful completion of each task item on a twelve (12) month basis as listed in Exhibit A of this contract. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$146,800.00 for the initial twelve (12) month term with four (4) twelve (12) month extension options in an amount not-to-exceed \$146,800.00 per extension option, for a total Contract amount not-to-exceed \$734,000.00 for all fees and expenses.

3.2 **Invoices.**

3.2.1 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Austin Water Utility
Attn:	Accounts Payable
Address	625 East 10th Street
City, State, Zip Code	Austin, Texas 78701

3.2.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.2.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.3 Payment.

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.3.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Retainage.** The City reserves the right to withhold a ten (10) percent (%) retainage until completion of all work required by the Contract. The Contractor's invoice shall indicate the amount due, less the retainage. Upon final acceptance of the work, the Contractor shall submit an invoice for the retainage to the City and payment will be made as specified in the Contract. Payment of the retainage by the City shall not constitute nor be deemed a waiver or release by the City of any of its rights and remedies against the Contractor for recovery of amounts improperly invoiced or for defective, incomplete or non-conforming work under the Contract.

3.5 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.6 **Reimbursable Expenses.** Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

3.6.1 **Administrative.** The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

3.6.2 **Travel Expenses.** All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

3.7 **Final Payment and Close-Out.**

3.7.1 The making and acceptance of final payment will constitute:

3.7.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.7.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall commence on July 28, 2019 and shall remain in effect for an initial term of twelve (12) months.

The Contract may be extended beyond the initial term for up to four (4) additional twelve (12) month periods subject to the approval of the Contractor and the City Purchasing Officer or his designee.

4.1.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.

4.1.2 Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract (not exceed 120 calendar days unless mutually agreed on in writing).

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance:** The following insurance requirements apply.

5.1.1 General Requirements.

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767

OR

PURInsuranceCompliance@austintexas.gov

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 Specific Coverage Requirements. The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 Business Automobile Liability Insurance. The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

Worker's Compensation and Employers' Liability Insurance. Waived (see waiver on file in the Purchasing Office)

5.1.2.3 Professional Liability Insurance. The Contractor shall provide coverage, at a minimum limit of \$500,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

If coverage is written on a claims-made basis, the retroactive data shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.

5.1.2.5 Endorsements. The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

5.2 Equal Opportunity.

5.2.1 Equal Employment Opportunity. No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 Americans With Disabilities Act (ADA) Compliance. No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.3 Interested Parties Disclosure. As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

5.4 Acceptance of Incomplete or Non-Conforming Deliverables. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.5 Delays.

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.5.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.6 Ownership And Use Of Deliverables. The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.5.1 Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

5.6.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

5.6.3 **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

5.7 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.8 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 Warranty – Price.

6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor.

The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 Workforce.

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

7.5 **Audits and Records.**

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 Records Retention:

7.5.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.

7.5.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 **Indemnity.**

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.8 Claims. If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 Notices. Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Ricardo Zavala, Procurement Specialist
III

P O Box 1088

Austin, TX 78767

To the Contractor:

Hoffpaur Consulting PLLC

ATTN: Richard Hoffpaur, Contract Manager

300 Borderbrook Drive

Bryan, TX 77801

7.10 Confidentiality. In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 **Dispute Resolution.**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 Subcontractors.

7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.23 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.24 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.25 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November

Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.26 Survivability of Obligations. All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.27 Non-Suspension or Debarment Certification. The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.28 Incorporation of Documents. Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:
https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

7.29 Order of Precedence. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.29.1 any exceptions to the Offer accepted in writing by the City;

7.29.2 the Supplemental Purchase Terms and Conditions;

7.29.3 the Standard Purchase Terms and Conditions;

7.29.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

HOFFPAUR CONSULTING PLLC

By: Richard J. Hoffpaur
Signature

Name: RICHARD J. HOFFPAUR
Printed Name

Title: Engineer, Principal

Date: April 3, 2019

CITY OF AUSTIN

By: [Signature]
Signature

Name: Ricardo Zavala
Printed Name

Title: Procurement Specialist III

Date: 4/3/19

List of Exhibits

Exhibit A	Hoffpauir Consulting Plc Proposal dated 11/6/18 ("Contractor's Proposal")
Exhibit B	Non Discrimination Certification, Section 0800
Exhibit C	Non-Suspension or Debarment Certification, Section 805

Exhibit A

Attachment 5

Quote for

**Hydrologic, Water Rights and
Water Supply Analyses**

prepared for

Austin Water Utility

by

Richard Hoffpauir, Ph.D., P.E.

Submitted on

November 6, 2018

BUSINESS INFORMATION:

Alias/DBA	Hoffpauir Consulting, PLLC
Austin Vendor ID	V00000923702
Business Structure	LLC
Address	300 Borderbrook Dr.
	Bryan, TX 77801
Telephone	979-575-0804
Fax	979-260-7674
Email	richard@rjhoffpauir.com

SERVICES:

The task items listed below primarily include professional and expert services related to hydrology, water rights, and water availability analyses. Each task item will be addressed by the Consultant as requested by the City of Austin Water Utility ("City") in a timely manner. Any deliverables, documents, or electronic media produced for the task items will be made available only to the City unless otherwise instructed.

HOURLY RATE:

The Consultant is responsible for tracking billable hours and submitting invoices to the City that reflect the hours incurred per task item and the total amount per invoice. The Consultant's rate per billable hour is \$175.00.

ADDITIONAL EXPENSES:

The Consultant will provide his own transportation to and from meetings and record miles driven per task item. Mileage expense will be invoiced at the U.S. General Services Administration (GSA) rate. The rate is currently \$0.545 per mile, but is revised by the GSA on a periodic basis. The annual mileage expense is estimated to be \$2,000 per year or \$10,000 for the 60 month period after work begins.

If overnight accommodation is required, the Consultant will invoice hotel expenses per task item at a rate not to exceed the GSA rate applicable to the location of the hotel. The annual hotel expense is estimated to be \$2,000 per year or approximately \$10,000 for the 60 month period after work begins.

No other additional expenses will be invoiced by the Consultant.

QUOTE OF TOTAL EXPENSE:

The total expense, inclusive of billable hours and \$20,000 of estimated additional expenses, for all task items to be addressed by the Consultant will not exceed 4,080 hours or \$734,000 for the 60 month period after work begins.

EXPENSE AND ASSUMPTIONS PER TASK QUOTE:

The following tasks are described in detail in the Scope of Work. Each task will be addressed by the Consultant in the form of meeting attendance, conference calls, hydrologic or numerical modeling analyses, email or memorandum drafting, or any other professional services required.

The amount quoted per task is a good faith estimate by the Consultant and involves judgment of the estimated level of effort required during a 60 month period. Actual level of effort and expenses per task may vary over the course of the 60 month period. Some tasks are sensitive to the timing or processes outside of the Consultants control, such as droughts, floods, or regulatory developments at TCEQ. However, the total expense will not exceed \$734,000 for the 60 month period.

The Task items are listed below with an estimate of overall level of effort as a percentage for the 60 month period in parentheses.

- Task 1: Assist City staff with matters related to water rights (25%)
- Task 2: Water Supply/Drought (20%)
- Task 3: Integrated Water Resources Plan Implementation and Update (19%)
- Task 4: LCRA-Related Support (25%)
- Task 5: Regional Planning (6%)
- Task 6: Other Items (5%)

The overall level of effort as percentage, shown in parentheses above, is an estimate over the entire 60 month period. The annual level of effort of each task item will likely vary from the percentages according to the work-load and immediacy of sub-tasks within each item. For example, much of the work under Task 3 will likely not occur until later in the 60 month period as Austin Water begins work to update the IWRP. The initial IWRP process is currently in the final stages, and major work for the first update is not expected to begin for several years. Lower levels of annual effort in the interim are expected. Likewise, a revision to the LCRA Water Management Plan is currently in progress and expected to be completed in early 2019. The next revision to the LCRA Water Management Plan is not expected to be completed until 2025. Thus, the level of effort for the sub-task in Task 4 related to Water Management Plan revision will likely be shifted until later in the 60 month period.

Richard J. Hoffpauir, Ph.D., P.E.

Hoffpauir Consulting, PLLC

4103 S. Texas Ave., Suite 204, Bryan, Texas 77802-4043

979-575-0804 | richard@rjhoffpauir.com

CREDENTIALS

- Ph.D. in Civil Engineering, Environmental and Water Resources Engineering Program, Conferred December 2010, Texas A&M University, College Station, Texas, GPR 4.0
- Registered Professional Engineer in Texas, P.E. No. 112950
- Registered Professional Engineering Firm in Texas, Firm No. F-14969
- Registered Engineering Intern, Louisiana, E.I. No. 18350

EXPERIENCE

Hoffpauir Consulting

Consultant

2004-present

Provide consulting services specializing in surface water supply and water availability modeling using the Water Rights Analysis Package (WRAP) and the Texas Commission on Environmental Quality (TCEQ) Water Availability Model (WAM). Consulting expertise also includes Texas surface water rights permitting, Texas regional water planning, and hydrologic analyses related to surface water availability and environmental flow modeling pertinent to the Texas Environmental Flows Rulemaking process.

Texas A&M University Engineering Experiment Station

Research Engineering Associate III

2009-2014

Conducted research related to development of WRAP/WAM capabilities for the TCEQ with an emphasis on daily simulation and environmental instream flow modeling capabilities.

Texas A&M University Department of Civil Engineering

Graduate Student Research Assistant

2002-2008

Conducted research related to development of WRAP/WAM capabilities for the TCEQ with an emphasis on daily simulation.

ARD, Inc.

Independent Subcontractor

2003-2004

Provided WAM and GIS support for U.S. Agency for International Development-funded project in the Republic of Armenia to develop capabilities for sustainable water resources management.

PROFESSIONAL ORGANIZATIONS/COMMITTEES

- American Society of Civil Engineers
- American Water Resources Association
- Texas Water Conservation Association (TWCA)
- TWCA Surface Water Committee (2015-present)—active participant and voting member of the full committee as well as the following subcommittees: Environmental Flows, WRAP/WAM, TCEQ Permitting Process, Federal Permitting
- Colorado and Lavaca Basin Bay and Basin Expert Science Team (2010-present)

Richard J. Hoffpauir, Ph.D., P.E.

Hoffpauir Consulting, PLLC

300 Borderbrook Dr.

Bryan, Texas 77801

979-575-0804 | richard@rjhoffpauir.com

EDUCATION

Ph.D. in Civil Engineering, Environmental and Water Resources Engineering Program, December 2010

Dissertation Title: *Daily Time Step Simulation with a Priority Order Based Surface Water Allocation Model*

Texas A&M University, College Station, Texas, GPR 4.0

M.S. in Civil Engineering, Environmental and Water Resources Engineering Program, May 2001

Thesis Title: *Effects of Vegetation Parameter Aggregation on Modeled Evapotranspiration*

Texas A&M University, College Station, Texas, GPR 4.00

B.S. in Engineering with emphasis on Civil Engineering, May 1998

McNeese State University, Lake Charles, Louisiana, GPA 3.88, magna cum laude

PROFESSIONAL REGISTRATION

Registered Professional Engineer in Texas, P.E. No. 112950

Registered Professional Engineering Firm in Texas, Firm No. F-14969

Registered Engineering Intern, Louisiana, E.I. No. 18350

PROFESSIONAL EXPERIENCE

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2004-present

Provide consulting services specializing in surface water supply and water availability modeling using the Water Rights Analysis Package (WRAP) and the Texas Commission on Environmental Quality (TCEQ) Water Availability Model (WAM). Consulting expertise also includes Texas surface water rights permitting, Texas regional water planning, and hydrologic analyses related to surface water availability and environmental flow modeling pertinent to the Texas Environmental Flows Rulemaking process.

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Conducted research related to development of WRAP/WAM capabilities for the TCEQ with an emphasis on daily simulation and environmental instream flow modeling capabilities.

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ARD, Inc.

Independent Subcontractor

2003-2004

Provided WAM and GIS support for U.S. Agency for International Development-funded project in the Republic of Armenia to develop capabilities for sustainable water resources management.

INSTRUCTIONAL EXPERIENCE

Instructor for WRAP/WAM Continuing Education Training Courses

- Texas Water Resources Institute, College Station, 2 days, August 2012
- Texas Commission on Environmental Quality, Austin, 1 day, December 2011
- Texas Commission on Environmental Quality, Austin, 1 day, July 2010
- Texas A&M University AgriLife Urban Solutions Center, Dallas, 2.5 days, July 2010
- Texas Water Resources Institute, College Station, 2.5 days, July 2009
- Texas Water Development Board, Austin, 2 days, May 2009
- Texas Water Resources Institute, College Station, 2.5 days, August 2008

Invited Speaker for Conferences and Workshops

WRAP Users' Group:

- January 2016 – Presentation Title: *Daily Time Step Models with Emphasis on Simulation of SB3 Environmental Flow Standards*, hosted by Texas Commission on Environmental Quality
- February 2012 – Presentation Title: *Modeling Environmental Instream Flow Requirements with a Daily Time Step*, hosted by Texas Commission on Environmental Quality
- April 2010 – Presentation Title: *WRAP-SIMD*, hosted by the Texas Water Resources Institute
- October 2009 – Presentation Title: *WRAP-SIMD*, hosted by the Brazos River Authority
- April 2009 – Presentation Title: *WRAP-SIMD*, hosted by Malcolm Pirnie
- September 2008 – Presentation Title: *Distributing Flow to an Ephemeral Stream*, hosted by Espey
- March 2008 – Presentation Title: *Priority Date Modification*, hosted by Halff and Associates
- September 2007 – Presentation Title: *Application of SIMD, Brazos WAM Case Study*, hosted by the Lower Colorado River Authority
- September 2006 – Presentation Title: *Water Availability Modeling with a Daily Time Step*, hosted by Freese and Nichols, Inc.

American Society of Civil Engineers, Texas Section:

- April 2012 – Presentation Title: *Modeling Environmental Instream Flow Requirements*, Spring Conference
- April 2011 – Presentation Title: *Daily Version of the Water Rights Analysis Package Modeling System*, Spring Conference

Other:

- January 2018 – Presentation Title: *Hydrologic Modeling for Water Forward*, Austin's Integrated Water Resources Plan, Freese & Nichols, Inc. Technical Excellence Seminar
- October 2017 – Presentation Title: *Using Climate Change Data in Water Supply Planning for Austin*, Texas Water Conservation Association's Fall Conference
- March 2011 – Presentation Title: *Technical Aspects of Hydrology in Surface Water Permitting, Planning, and Environmental Flows*, Brown McCarroll's Water Law Seminar

PROFESSIONAL MEMBERSHIPS AND COMMITTEES

- American Society of Civil Engineers
- American Water Resources Association
- Texas Water Conservation Association (TWCA)
- TWCA Surface Water Committee, 2015-present – Active participant and voting member of the full TWCA Surface Water Committee as well as the following subcommittees: Environmental Flows, WRAP/WAM, TCEQ Permitting Process, Federal Permitting.
- The Nature Conservancy (TNC), Texas Water Scorecard Advisory Council, 2013-2015 – TNC advisory council member representing expertise in Texas surface water rights and modeling in a project on communicating the state of water resources to citizens, media, businesses, and political leadership.

- Colorado and Lavaca Basin Bay and Basin Expert Science Team (BBEST), 2010-present— Active member of the BBEST, serving second term. Pursuant to the Texas Senate Bill 3 Environmental Flows Allocation Process, the BBEST conducted environmental flow analyses and recommended an environmental flow regime for the Colorado and Lavaca River Basins to support a sound ecological environment based on the best available science.

PUBLICATIONS

Technical Reports Published by the Texas Water Resources Institute (TWRI)

(available at <http://twri.tamu.edu/publications/reports/>)

- R.A. Wurbs and R.J. Hoffpauir, *Water Rights Analysis Package Modeling System Programming Manual*, TWRI TR-388, 4th Edition, 196 pages, August 2015.
- R.A. Wurbs and R.J. Hoffpauir, *Water Rights Analysis Package Daily Modeling System*, TWRI TR-430, 2nd Edition, Texas Water Resources Institute, 286 pages, August 2015.
- R.A. Wurbs and R.J. Hoffpauir, *Environmental Flows in Water Availability Modeling*, TWRI-TR-440, 285 pages, May 2013.
- R.A. Wurbs, R.J. Hoffpauir, and S.T. Schnier, *Application of Expanded WRAP Modeling Capabilities to the Brazos WAM*, TWRI TR-389, 2nd Edition, 356 pages, August 2012.
- R.A. Wurbs and R.J. Hoffpauir, *WRAP Daily Simulation, Flood Control, and Short-Term Reliability Modeling Capabilities*, TWRI TR-403, 296 pages, December 2011.
- R.A. Wurbs, R.J. Hoffpauir, H.E. Olmos, and A.A. Salazar, *Conditional Reliability, Sub-Monthly Time Step, Flood Control, and Salinity Features of WRAP*, TWRI TR-284, 263 pages, September 2006.

Technical Reports Contracted by the Texas Water Development Board (TWDB)

(available at http://www.twdb.state.tx.us/publications/reports/contracted_reports/index.asp)

- A. Singh, S. Mishra, R.J. Hoffpauir, A.M. Lavenue, N.E. Deeds, and C.S. Jackson, *Analyzing Uncertainty and Risk in the Management of Water Resources for the State of Texas*, 104 pages, July 2010.

Journal Papers

- R.A. Wurbs and R.J. Hoffpauir, "Environmental Flow Requirements in a Water Availability Modeling System," *Journal of Sustainability of Water Quality and Ecology*, International Water Association, Elsevier, [dx.doi.org/10.1016/j.swape.2016.05.003](https://doi.org/10.1016/j.swape.2016.05.003), May 2016.

Conference Proceedings

- R.A. Wurbs and R.J. Hoffpauir, "Incorporation of Environmental Flows in Water Availability Modeling," *Proceedings of the 2013 Annual Conference of the Universities Council on Water Resources and National Institutes for Water Resources*, Lake Tahoe, California, June 2013.
- R.J. Hoffpauir and R.A. Wurbs, "Modeling Environmental Instream Flow Requirements," *Proceedings of Spring 2012 Conference*, Texas Section, American Society of Civil Engineers, April 2012.
- R.J. Hoffpauir and R.A. Wurbs, "Daily Version of Water Rights Analysis Package Modeling System," *Proceedings of Spring 2011 Conference*, ASCE Texas Section, April 2011.
- A. Singh, R. Hauffpauir [sic], S. Mishra, M. Lavenue, and A. Valocchi, "Analyzing Uncertainty and Risk in the Management of Water Resource for the Texas Water Development Board," *Proceedings of the World Environmental and Water Resources Congress 2010*, American Society of Civil Engineers, May 2010.
- M. Corkran, R. Hoffpauir, B.R. Britton, M. Vardanyan, V. Narimanyan, and L. Harutyunyan, "MIS Systems in Armenian Water Resources Management: A Case Study," *Fourth International Conference on*

Management Information Systems Incorporating GIS & Remote Sensing, Wessex Institute of Technology, UK, WITPRESS, Southampton, Boston, 2004.

TECHNICAL REPORTS FOR RESEARCH AND CONSULTING SPONSORS

- R.J. Hoffpauir, *Hydrologic Period Extension with Synthesized Natural Flows for the Trinity and San Jacinto River Basin Water Availability Models*, Austin Branch of National Wildlife Federation, 116 pages, July 2017.
- R.A. Wurbs, M. Ryu, M.A. Pauls, and R.J. Hoffpauir, *Daily Water Availability Model for the Guadalupe and San Antonio River Basins*, Texas Commission on Environmental Quality, 171 pages, August 2014.
- R.A. Wurbs, R.J. Hoffpauir, M.A. Pauls, M. Ryu, and A. Bista, *Daily Water Availability Model for the Sabine River Basin*, Texas Commission on Environmental Quality, 182 pages, July 2014.
- R.A. Wurbs, R.J. Hoffpauir, M.A. Pauls, M. Ryu, and A. Bista, *Daily Water Availability Model for the Neches River Basin*, Texas Commission on Environmental Quality, 117 pages, July 2014.
- R.J. Hoffpauir, M.A. Pauls, and R.A. Wurbs, *Daily Water Availability Model for the Trinity River Basin*, Texas Commission on Environmental Quality, 109 pages, April 2014.
- R.J. Hoffpauir, M.A. Pauls, and R.A. Wurbs, *Application of Expanded WRAP Modeling Capabilities to the Colorado WAM*, Texas Commission on Environmental Quality, 153 pages, September 2013.
- M.A. Pauls, R.J. Hoffpauir, and R.A. Wurbs, *Comparison of Stream Flow in Trinity River Basin*, Texas Commission on Environmental Quality, 67 pages, September 2013.
- M.A. Pauls, R.J. Hoffpauir, and R.A. Wurbs, *Hydrologic Period-of-Analysis Extension for the Trinity River Basin Water Availability Model*, Texas Commission on Environmental Quality, 219 pages, August 2013.
- M.A. Pauls, R.J. Hoffpauir, and R.A. Wurbs, *Hydrologic Period-of-Analysis Extension for the Colorado River Basin and Brazos-Colorado Coastal Basin Water Availability Model*, Texas Commission on Environmental Quality, 455 pages, August 2013.
- R.J. Hoffpauir and R.A. Wurbs, *WRAP/WAM Daily Simulation of the Neches River Basin*, Texas Commission on Environmental Quality, 62 pages, August 2012.
- R.J. Hoffpauir and R.A. Wurbs, *Developmental Version of the Daily WRAP with Brazos Case Study*, Texas Commission on Environmental Quality, December 2010.
- R.J. Hoffpauir, J. Islam, and R.A. Wurbs, *Neches River Basin Case Study with the Developmental Daily WRAP*, Texas Commission on Environmental Quality, December 2010.

EXHIBIT B
City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas
Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 3rd day of April, 2019

CONTRACTOR
Authorized
Signature

Richard J. Hoffpauir

RICHARD J. HOFFPAUIR

Title

Engineer, Principal

City of Austin, Texas Exhibit C
Section 0805
NON-SUSPENSION OR DEBARMENT CERTIFICATION

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name:

HOFFPAUIR CONSULTING, PLLC

Signature of Officer or
Authorized
Representative:

Richard J. Hoffpauir Date: April 3, 2019

Printed Name:

RICHARD J. HOFFPAUIR

Title

Engineer, Principal